

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

Eva Marie Stilkey

v.

Civil No. 17-cv-337-LM  
Opinion No. 2018 DNH 009

Alexander Marsters

**O R D E R**

This appeal from bankruptcy court arises from an adversary complaint filed by the creditor, Eva Marie Stilkey, to determine the dischargeability of a debt—namely, a judgment that Stilkey obtained in state court against the debtor, Alexander Marsters. The U.S. Bankruptcy Court for the District of New Hampshire (Deasy, J.) granted Marsters' motion to dismiss the adversary complaint, and thereafter denied Stilkey's motion for reconsideration. After the period to appeal expired, Stilkey filed an untimely notice of appeal from these decisions and a motion to extend the appeal period. Concluding that Stilkey had not demonstrated "excusable neglect" under [Federal Rule of Bankruptcy Procedure 8002\(d\)\(1\)\(B\)](#), the bankruptcy court denied the motion to extend and dismissed her notice of appeal. Stilkey now appeals the bankruptcy court's orders denying the

motion to extend and dismissing her notice of appeal. For the following reasons, this court affirms both orders.<sup>1</sup>

### **Background**

Marsters filed a Chapter 7 bankruptcy case in January 2017. In April, Stilkey, acting pro se, filed an adversary complaint, in which she argued, under a number of theories, that the state-court judgment she had previously obtained against Marsters was nondischargeable. On June 12, the bankruptcy court granted Marsters' motion to dismiss the complaint. On June 19, Stilkey filed a motion for reconsideration, asserting that the bankruptcy court erred by dismissing her complaint. Construing her motion as one "to alter or amend" under Rule 59(e), the bankruptcy court denied the motion on June 23.

The fourteen-day period to appeal expired on July 7, and the case was closed on July 10. See Fed. R. Bankr. P. 8002(a)(1). Seven days later, on July 17, Stilkey filed (1) a motion to reopen the proceeding, (2) a motion to extend the appeal filing deadline, and (3) a notice of appeal from the bankruptcy court's orders on her motion to dismiss and motion

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<sup>1</sup> The court denies Stilkey's request for oral argument. Pursuant to [Federal Rule of Bankruptcy Procedure 8019\(b\)](#), where, as here, "the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument," a district court need not hold oral argument. Fed. R. Bankr. P. 8019(b)(3).

for reconsideration. In her motion to extend, Stilkey stated that she had been on vacation from June 20 to July 10, and that she did not learn of the court's order on the motion for reconsideration until July 13, when she was checking her mail.

The bankruptcy court reopened the adversary proceeding, but denied the motion to extend and, consequently, dismissed the notice of appeal. In denying the motion to extend, the bankruptcy court relied on the fact that "the reason for the delay was within [Stilkey's] control." Doc. no. 1 at 6 of 13. The court also noted that, despite returning from her trip on July 10, Stilkey waited "an entire week" to seek an extension of the deadline. Id. For these reasons, the bankruptcy court concluded that Stilkey had not demonstrated excusable neglect, as required by Rule 8002(d)(1)(B). Stilkey thereafter appealed to this court.

### **Standard of Review**

Under [28 U.S.C. § 158\(a\)](#), this court has jurisdiction to hear appeals from final judgments, orders, and decrees of the bankruptcy court, including an order denying a motion for an extension under [Federal Rule of Bankruptcy Procedure 8002](#). See [Sheedy v. Bankowski](#), No. 16-cv-10702-ADB, 2017 WL 74282, at \*2 (D. Mass. Jan. 6, 2017). "District courts reviewing an appeal from a bankruptcy court generally review findings of fact for

clear error, and conclusions of law de novo.” Id.

“Discretionary rulings made pursuant to the Bankruptcy Code are reviewable only for an abuse of discretion.” AMC Mortg. Servs., Inc. v. Chase, No. 08-cv-313-JL, 2008 WL 4613867, at \*1 (D.N.H. Oct. 15, 2008) (quoting In re Gonic Realty Trust, 909 F.2d 624, 626 (1st Cir. 1990)). “A bankruptcy court may abuse its discretion by ignoring a material factor that deserves significant weight, relying on an improper factor, or, even if it considered only the proper mix of factors, by making a serious mistake in judgment.” Id.

Generally, a party must file a notice of appeal within fourteen days after entry of the order being appealed. Fed. R. Bankr. P. 8002(a)(1). The bankruptcy court may extend the deadline if the party files a motion to extend “(1) within the fourteen-day period, Fed. R. Bankr. P. 8002(d)(1)(A); or (2) within twenty-one days after the fourteen-day appeal period, upon a showing of excusable neglect by the moving party. Fed. R. Bankr. P. 8002(d)(1)(B).” In re Sheedy, 875 F.3d 740, 742 (1st Cir. 2017). Here, Stilkey does not dispute that, given the timing of her motion to extend, she must demonstrate “excusable neglect” under Rule 8002(d)(1)(B).

“A determination of whether the neglect at issue is excusable is at bottom an equitable one, taking account of all

relevant circumstances surrounding the party's omission.” [Bankowski](#), 2017 WL 74282, at \*3 (quotation and internal quotation marks omitted). The bankruptcy court weighs four factors in assessing whether a party’s neglect is excusable: “(1) the danger of prejudice to the non-moving party; (2) the length of delay and potential impact on judicial proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith.” [In re Sheedy](#), 875 F.3d at 744. The reason for the delay is the most important factor. Id.

The First Circuit has stressed that “[d]emonstrating excusable neglect is a demanding standard and the trial judge has wide discretion in dealing with litigants who make such claims.” Id. at 743 (quotation and internal quotation marks omitted). Thus, great deference is afforded to the bankruptcy court’s determination, which should not be set aside “without a definite and firm conviction that the court below abused its discretion and committed clear error.” Id.

### **Discussion**

Stilkey raises a number of arguments supporting her appeal, which the court condenses into the following essential claims: (1) the bankruptcy court did not properly apply the relevant standard on excusable neglect, in that the court focused solely on the reason for delay; and (2) the court should have acted

more leniently and equitably in considering Stilkey's motion to extend, because both Marsters and the bankruptcy court committed errors during the proceedings. Neither of these arguments justifies reversal of the bankruptcy court's decision.

Stilkey first asserts that the bankruptcy court did not apply the proper standard because it did not consider all relevant factors and extenuating circumstances, including, among other things, Stilkey's good faith, pro se status, and lack of knowledge about bankruptcy matters. Instead, the bankruptcy court "only considered whether the delay was within [Stilkey's] control." Doc. no. 4 at 10 of 18. Stilkey contends these other considerations favor a finding of excusable neglect.

The court discerns no error in the bankruptcy court's analysis. As the bankruptcy court correctly observed, although there are four factors which guide a court in deciding whether neglect is excusable, they do not carry equal weight. Rather, the reason for the delay is the most critical, and "[e]ven where there is no prejudice, impact on judicial proceedings, or trace of bad faith, the favorable juxtaposition of these factors does not excuse the delay where the proffered reason is insufficient."<sup>2</sup> In re Sheedy, 875 F.3d at 744 (quotation,

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<sup>2</sup> Stilkey cites cases from the Third Circuit for the proposition that "all factors must be considered and balanced; no one factor trumps the others." Doc. no. 4 at 11 of 18. The

brackets, and internal quotation marks omitted); see also [Hospital del Maestro v. NLRB](#), 263 F.3d 173, 175 (1st Cir. 2001).

In this case, the bankruptcy court noted that Stilkey filed her motion for reconsideration “the day before she left for a 20-day vacation/business trip,” doc. no. 1 at 6 of 13, and that the trip itself was within her control. At the time she left for her trip, Stilkey had both the opportunity and obligation to monitor developments with her case, and she failed to do so. Thus, given the absence of a valid reason for the delay, the bankruptcy court acted within its discretion in finding that Stilkey had not demonstrated excusable neglect. See In re Sheedy, 875 F.3d at 744-46 (bankruptcy court acted within its discretion in denying party’s motion to extend, which was filed one day after appeal period elapsed, where party’s counsel justified delay on ground that he was preoccupied with responsibilities associated with religious holiday). Stilkey’s pro se status and lack of knowledge about the applicable deadline do not alter this conclusion. See, e.g., Bell v. Nat’l Collegiate Student Loan Trust 2006-1, No. 15-12301-NMG, 2015 WL 4242380, at \*1 (D. Mass. July 10, 2015) (“Misinterpretation or

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First Circuit has clearly stated, however, that the reason for delay is the predominant factor, see In re Sheedy, 875 F.3d at 744, and this court is bound to follow the law of the circuit in which it sits, see Nevor v. Moneypenny Holdings, LLC, 842 F.3d 113, 125 (1st Cir. 2016).

ignorance of the applicable time limits even by pro se litigants does not constitute excusable neglect.” (quotation omitted)).

Stilkey next alleges that, during the litigation, the bankruptcy court acted with more leniency toward Marsters than her. She also claims that the bankruptcy court erred by, among other things, mistakenly discharging Marsters’ debt at one point during the litigation, an error which the court subsequently corrected. Based on these allegations, Stilkey argues that the bankruptcy court “demonstrated an abuse of discretion . . . when it held [Stilkey] to a higher threshold regarding requirements of the bankruptcy court than [Marsters] and even the court itself.” Doc. no. 4 at 13 of 18.

The court is not persuaded. These allegations are unrelated to, and do not bear on, the pertinent issue—whether Stilkey has demonstrated excusable neglect under Rule 8002(d)(1)(B). They do not excuse Stilkey’s noncompliance with an unambiguous deadline, and they do not render the bankruptcy court’s decision on the motion to extend an abuse of discretion.

Accordingly, the bankruptcy court did not err when it denied Stilkey’s motion to extend and thereafter dismissed her notice of appeal. See [Colon-Santana v. Martinez-Malave](#), 125 F.3d 841, 1997 WL 556059, at \*1 (1st Cir. 1997) (“Untimely

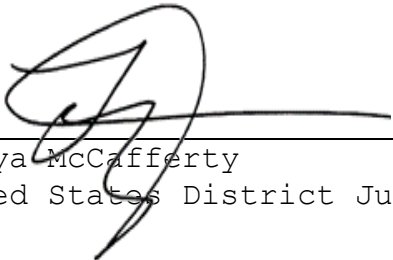


notice of appeal deprives the district court of jurisdiction to review the bankruptcy court's order." ).

**CONCLUSION**

For the reasons stated herein, the decisions of the bankruptcy court are AFFIRMED.

SO ORDERED.



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Landya McCafferty  
United States District Judge

January 9, 2018

cc: Edmond J. Ford, Esq.  
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